

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JAMES MACKAY and CELEBRITY FOODS, INC., Plaintiffs,	:	
v.	:	CIVIL ACTION NO. 10-218
WILLIAM F. DONOVAN and SPINE PAIN MANAGEMENT, INC. Defendants.	:	

ORDER

AND NOW, this 14th day of February, 2012, upon review the Plaintiffs' Motion for Summary Judgment on Liability [Doc. No. 44] and the responses and replies thereto, and Defendants' Motion for Summary Judgment [Doc. No. 54] and Plaintiffs' response thereto, and for the reasons set forth in the accompanying Memorandum Opinion, it is hereby **ORDERED** as follows:

1. Plaintiffs' Motion for Summary Judgment is **GRANTED** as to their Breach of Contract Claim and the Court will enforce the Settlement Agreement. Plaintiffs' Motion for Summary Judgment is **DENIED** as to their Breach of Good Faith and Fair Dealing Claim and their Unjust Enrichment Claim. The Court also **DENIES** Plaintiffs' request to set aside the Settlement Agreement.
2. Defendants' Motion for Summary Judgment is **GRANTED** as to Plaintiffs' Breach of Good Fair and Fair Dealing Claim and Unjust Enrichment Claim, and **DENIED** as to Plaintiffs' Breach of Contract Claim.
3. Although the Court has ruled on liability, the amount of damages is yet to be determined. Therefore, the parties shall report to the Court in writing with respect to whether the

case is settled on or before **February 24, 2010**. In the event the case is not settled, counsel shall include in their joint report a statement as to whether they believe a settlement conference before a magistrate judge, mediation under Local Civil Rule 53.3 [a copy of which is attached hereto as Attachment A] and the Mediation Protocol Under Local Civil Rule 53.3, or some other form of alternative dispute resolution might be of assistance in resolving the case and, if so, on what form of alternative dispute resolution they agree and by what date they will be prepared to commence such proceedings.

4. If the parties do not wish to engage in alternative dispute resolution on the issue of damages, they shall provide the Court with a joint proposed schedule for resolving the issue of damages.

It is so **ORDERED**.

BY THE COURT:

/s/ Cynthia M. Rufe

CYNTHIA M. RUFÉ, J.